

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CARNELL HUNNICUTT, SR.,

Plaintiff,

v.

No. 2:18-CV-00619-JCH-GBW

RAYMOND SMITH, D. VASQUEZ, EDDIE
SOLOMON, MINDY ORTEGA, MORIAMA
VALERIANO, GERMAN FRANCO, and
GEO GROUP, INC, sued in their official and
individual capacities,

Defendants.

GEO DEFENDANTS' MOTION TO STRIKE
"PLAINTIFF'S MOTION IN OPPOSITION TO DEFENDANTS [sic]
MOTION FOR SUMMARY JUDGMENT" AND AFFIDAVIT [docs. 54 and 55]

Defendants The GEO Group, Inc., Raymond Smith, D. Vasquez, Eddie Solomon, and Moriama Valeriano ("the GEO Defendants"), by counsel, YLAW, P.C. (April D. White), hereby submit the following Motion to Strike "Plaintiff's Motion in Opposition to Defendants [sic] Motion for Summary Judgment and Memorandum of Law in Support" [doc. 54] and Plaintiff's Affidavit [doc. 55]. As grounds therefore, the GEO Defendants would state these documents constitute an impermissible surreply to the GEO Defendants' Motion for Summary Judgment and should be stricken from the record. As further support for their Motion, the GEO Defendants state as follows:

1. Defendant Lewis-Ortega filed her Motion for Summary Judgment on December 11, 2020, arguing Plaintiff's claims should be dismissed because the allegations of Plaintiff's own verified Complaint demonstrate he chose to participate in the activity he now alleges resulted in a violation of his civil rights. [doc. 32]. Plaintiff filed his "Request that Mindy Lewis-Ortega's Motion for Summary Judgment Be Denied or Stayed" on January 4, 2021 [docs. 38, 39], and

Defendant Lewis-Ortega filed her Reply and Notice of Completion of Briefing on January 18, 2021 [docs. 44, 45].

2. The GEO Defendants filed their Motion for Summary Judgment on December 30, 2020, likewise arguing they are entitled to the dismissal of Plaintiff's claims herein because he voluntarily participated in the activity he now claims caused a violation of his civil rights. [doc. 36]. Plaintiff filed his Motion to Deny or Stay GEO Defendants' Motion for Summary Judgment on January 19, 2021 [doc. 46] and the GEO Defendants filed their Reply and Notice of Completion of Briefing on February 2, 2021.

3. Plaintiff has now filed his "Motion in Opposition to Defendants [sic] Motion for Summary Judgment and Memorandum of Law in Support" [doc. 54] and Affidavit, wherein he supplies additional argument in response to Defendants' Motions for Summary Judgment.

4. The Local Rules of this Court prohibit any party from filing a surreply without leave of the Court. D.N.M. LR-Civ. 7.4(b).

5. Plaintiff's pro se status does not relieve him of the responsibility to comply with the Court's procedural requirements. *Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994); see *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005) ("Although '[a] pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers,' *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir.1991), '[t]his court has repeatedly insisted that pro se parties follow the same rules of procedure that govern other litigants.' *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir.1994) (internal quotation marks omitted).")

6. Because Plaintiff did not seek leave of Court before filing his sur-reply, the Court should strike it and should decline to consider the arguments contained when ruling on the GEO

Defendants’ Motion for Summary Judgment. *Fed. Nat’l Mortg. Ass’n v. Milasinovich*, 161 F. Supp. 3d 981, 994 (D.N.M. 2016) (although motions to strike are generally disfavored, a Court may “choose to strike a filing that is not allowed by local rule, such as a surreply filed without leave of court”)(citation omitted)

WHEREFORE the GEO Defendants respectfully request the Court enter an Order granting their Motion, striking documents 54 and 55 from the docket, and awarding any such other and further relief as the Court deems just and proper.

Respectfully submitted,

YLAW, P.C.

/s/ April D. White

April D. White

Attorneys for Defendants GEO, Smith, Vasquez,

Solomon and Valeriano

4908 Alameda Blvd., NE

Albuquerque, NM 87113

(505) 266-3995

(505) 268-6694 (fax)

awhite@ylawfirm.com

I hereby certify that on this 26th day
of February, 2021, I filed the foregoing
electronically and served the following:

Via U.S. Mail:

Carnell Hunnicutt, Sr., #77910
Southern New Mexico Correctional Facility
ZA-A114
P.O. Box 639
Las Cruces, NM 88004-0639

Via Court's Electronic Service:

Geoffrey D. White
Park & Associates, LLC
3840 Masthead St. NE
Albuquerque, NM 87109
gwhite@parklawnm.com

/s/ April D. White

April D. White